TITLE BY DEVOLUTION OF POSSESSORY RIGHTS. *Anon.* 17 Madras L. J. 297. See *supra.*

TRADE UNIONS, THE LEGAL STATUS OF, IN THE UNITED KINGDOM, WITH CONCLUSIONS APPLICABLE TO THE UNITED STATES. *Henry R. Seager.* Discussing both on authority and on principle the right to sue an unincorporated union. 22 Pol. Sci. Quar. 611.

VENDOR AND PURCHASER. *Anon.* Maintaining that the vendor cannot sue before transfer is due for failure to pay advance instalments of the price. 27 Can. L. T. 725.

II. BOOK REVIEWS.

A SUPPLEMENT TO A TREATISE ON THE SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW. By John Henry Wigmore. Boston: Little, Brown and Company. 1907. pp. xiii, 459. 8vo.

In reviewing Wigmore on Evidence three years ago we said that use alone could be the final test of the value to the profession of such an original and monumental work (18 HARV. L. REV. 478). This test has already satisfied the profession of the permanent value of Professor Wigmore's work, which has become not merely the best but the only authority in general use in this country and in England. In our review of the original work we spoke of several valuable innovations in the art of law-book writing. This supplement is also such an innovation. The fact that in a little over three years two hundred and eighty-one large pages devoted almost entirely to notes should become necessary, shows the enormous importance of the subject and of the book, and indicates also the value of this new plan of issuing a supplementary volume to an original work.

In this supplement all the new cases during the last three years, amounting to about four thousand in number, and all the statutes passed in that time have been arranged in paragraphs under the original topic titles and with the original numbering. It is thus possible for one who is using Wigmore on Evidence, by a glance into the supplement, to add to the discussion contained in the original volumes all the new information which the author has to give as a result of later judicial discussion and legislative action.

Most of the matter in the supplement consists of additional notes. There are, however, in a few cases, new paragraphs added to the text. The longest and most important of these is section 2281a, entitled "Mode of Obtaining Immunity in Return for Self-Criminating Evidence." This section constitutes an addition of five pages to the former text. Another important new discussion is that upon the right to disprove the truth of a statement in a case where evidence has been offered simply to prove that the statement was made. This is new section 263. The point aroused great public interest when it was raised in the recent Thaw trial. The author's opinion is opposed to the ruling in the Thaw trial, although the weight of authority, as he states it, is very strongly against him.

In this supplement the author appears to have expressed his individual opinions with more force and freedom than he permitted himself in his original volumes. Compare, for instance, the picturesque language which he allo s himself in commenting on recent decisions granting new trials for erroneous rulings on evidence — "The Saracenic invasion, led by Fanatic Technicality into the realms of Truth and Common Sense" — with his forceful but less imaginative language in section 21 of the first of the former volumes.

There is a new index, slightly longer than the earlier one, covering the four original volumes and the supplement. J. H. B.

LAW: ITS ORIGIN, GROWTH, AND FUNCTION. By James Coolidge Carter. New York and London: G. P. Putnam's Sons. 1907. pp. vii, 355. 8vo.

This volume contains thirteen lectures, which were prepared in order to be

delivered at the Harvard Law School. Their author died before their delivery; but his executors, pursuant to his wish, have published his manuscript.

The author's purpose is to establish a philosophy of the law. What the law is and where it comes from, are questions really very nearly the same. Mr. Carter's answer is in no degree uncertain, technical, or obscure. Law is custom. It arose in custom and has never properly been anything else. It is the same whether you are a wood veddah of Ceylon, a South American Abipone, or a Justice of the United States Supreme Court. A contract is a raised expectation, and breach of contract is objectionable because it violates what man by custom has a right to expect. Judges are experts on custom. They do not make the law; they only declare it. The view that law is the command of a sovereign dictated to a cringing people, as well as the rule that "what the sovereign permits, he commands," is totally rejected.

Much of the book is filled with Mr. Carter's answers to the obvious objection to his view. What place has legislation if the law is only found and not made? There are several answers: first, that in well-ordered states the great body of legislation is on public, not private, law, merely directing the order of government in mechanical particulars; secondly, that it can profitably fix definite rules for the criminal law, where custom is slow; thirdly, that it is useful for settling differences between diverse customs or in changing conditions. In all these cases, Mr. Carter thinks, legislation follows custom, or, at least, does not trample on it. And when legislation has tried to disregard settled custom, he finds it is the legislation which has been disregarded by society, and custom which has been followed, *vide* the Statute of Uses, and its result of adding three words to conveyancing. The truth is, the question, What is law? has different answers according to the point of view. If one regards only that which is considered right by the majority of the inhabitants of the state and which has the sanction of long custom, then misdirected legislation is no part of the real law; it is only a flaw on the surface of it, which time will brush away. But if the point of view is more practical and considers what must be done to escape actual punishment, the question of fundamental verities disappears, and all acts of the legislature become of absorbing interest and are certainly the law. Mr. Carter calls legislation which goes in the face of custom, tyranny, and not law. This is really a matter of nomenclature. The importance of the book is its strong assertion and convincing proof that custom is the only basis of law; that law "is not the dictate of Force, but an emanation from Order."

Immediately after defining the proper function of legislation, Mr. Carter considers very carefully the application of his philosophy to the modern codes of private law. His conclusions follow inevitably from his philosophy. If law is custom and not command, efforts to make law by command must be futile unless they can succeed in framing commands in accord with customs which will arise to provide for new groupings of fact. No one has ever claimed for man sufficient omniscience to foresee what such customs will be, and no one but Bentham has openly advocated true adherence to an erroneous and incomplete code rather than a reliance on custom, however uncertain. Even if a code were limited to declaring the law in so far as it was settled — a limitation which Mr. David Dudley Field himself admitted to be necessary, though he failed to express it in his code — there would still be a need of human knowledge of such a standard that several advocates of codes in the ideal have doubted its existence. These difficulties are not mere phantoms of logic to be disregarded by the practical man. Mr. Carter points out how they have contributed to the partial or complete failure of all the most earnest attempts at codification — in Rome, in Prussia, in France, and in New York, Louisiana, and California.

It should be added that the reader of a book which deals with law, as this one does, almost entirely on its philosophical side, cannot fail to be especially interested when he realizes that the ideas he reads were those of the busiest lawyer in the busiest city of the United States. It is noteworthy that a man so truly practical could take time to consider deeply matters of philosophy.

D. M. M.